

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

* * * * *

JAMES P. CIESLUK,
PLAINTIFF,

V.

THE TOWN OF BELLINGHAM,
BRIAN D. KITCHER, PETER
LEMON, EDWARD GUZOWSKI
JOHN MELANSON, GERARD L.
DAIGLE and RICHARD PERRY,
DEFENDANTS.

* * * * *

CIVIL ACTION
NO. **04-12689 RWZ**

RECEIPT # _____
AMOUNT \$ 150.00
SUMMONS ISSUED 7
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. W.P.
DATE 12/23/04

MAGISTRATE JUDGE LPC

COMPLAINT

Introductory Statement

This is a Complaint brought pursuant to M.G.L. Chapter 12, Section 11 and 42 U.S.C. 1983 for deprivation of the Plaintiff's civil rights and for damages resulting from the same due to an unlawful arrest, search and seizure of the Plaintiff and his property perpetrated by the Defendants on or about January 17, 2002 and continuing through at least June of 2004.

Parties

1. James P. Ciesluk is a natural person and a citizen of the United States and the Commonwealth of Massachusetts. At all times relevant hereto he was a resident of the Town of Bellingham, Massachusetts and the County of Norfolk.

2. The Defendant, Town of Bellingham, is a municipality located in the County of Norfolk in the Commonwealth of Massachusetts.

3. Defendant, Brian D. Kutcher, was at all times relevant hereto, a police officer employed by the Town of Bellingham and was operating under color of state law.

4. The Defendant, Peter Lemon, was at all times relevant hereto, a police officer employed by the Town of Bellingham with the rank of Sergeant and was operating under color of state law.

5. The Defendant, Edward W. Guzowski, was at all times relevant hereto, a police officer employed by the Town of Bellingham with the rank of Sergeant and was operating under color of state law.

6. The Defendant John J. Melanson, was at all times relevant hereto, a police officer employed by the Town of Bellingham and was operating under color of state law.

7. The Defendant, Gerard L. Daigle, was at all times relevant hereto, the Chief of Police for the Town of Bellingham, and was operating under color of state law.

8. The Defendant Richard Perry, was at all times relevant hereto, a police officer employed by the Town of Bellingham and was operating under color of state law.

Factual Allegations Common To All Counts

9. On January 17, 2002 the Plaintiff was the sole proprietor of "The Game Vault," a video arcade located in the Bellingham Mall in the Town of Bellingham, Massachusetts.

10. On that date Defendants, their agents, servants and persons for whom they are responsible, arrested the Plaintiff at his place of business, "The Game Vault," without probable cause.

11. Also on that date, Defendants, their agents, servants and persons for whom they are responsible, conducted a warrantless search of the Defendant's business premises and seized several materials without probable cause.

12. The Defendants, their agents, servants and persons for whom they are responsible, detained the Plaintiff from January 18, 2002 until his release on bail on April 30, 2002 in the Worcester County House of Correction and thereafter further curtailed his freedom by maintaining false charges against him until June, 2004.

13. On January 17, 2002, the Defendants were aware, or should have been aware, that there existed no probable cause to arrest, charge or detain the Plaintiff.

14. As a result of the actions of the Defendants, the Plaintiff suffered loss of business and suffered other damages.

COUNT I (SECURE IN PERSON – CIVIL RIGHTS)

15. The Plaintiff realleges and reaffirms the allegations contained in Paragraphs One through Fourteen above as if specifically set forth herein by reference.

16. The Defendants and other persons for whose conduct they are responsible, by arresting the Plaintiff, violated his right to be free from false arrest as guaranteed by the Fourth Amendment to the United States Constitution and Article Fourteen of the Massachusetts Declaration of Rights. This violation is actionable under M.G.L.c.12, section 11I and 42 U.S.C. 1983, et seq.

17. Said actions were done through use of threats, intimidation and coercion; all in violation of M.G.L. c.12, section 11I, as they were undertaken for the purpose of deterring the Plaintiff from enjoying his right to freedom from unlawful arrest.

WHEREFORE, the Plaintiff demands judgment against the Defendants for damages, costs and attorneys fees.

COUNT TWO (FALSE IMPRISONMENT)

18. The Plaintiff repeats and reasserts the allegations contained in Paragraphs 1-17 above and incorporates them by reference as if fully set forth herein.

19. On or about January 17, 2002, the Defendants, their agents, servants, employees or other persons for whom they are responsible,

intentionally confined the Plaintiff against his will when they caused him to be held in the Worcester County House of Correction until February 28, 2002, without probable cause.

20. The intentional confinement of the Plaintiff was done wrongfully, unlawfully and deprived him of his liberty and property without due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article Fourteen of the Massachusetts Declaration of Rights, all in violation of 42 U.S.C. 1983, et seq.

21. As a direct and proximate result of the acts of the Defendants, Plaintiff was deprived of his liberty, subjected to derision by those knowing or learning of his detention and was damaged in his business.

22. The actions of the Defendants and those, for whose conduct they are responsible, were performed with threats, intimidation and coercion and, therefore, a violation M.G.L.c.12, section 11H and I.

COUNT THREE (UNLAWFUL SEARCH AND SEIZURE)

23. Plaintiff repeats and reasserts the allegations contained in Paragraphs 1 through 22 above as if specifically set forth herein.

24. On or about January 17, 2002, the Defendants and others for whom they are responsible, searched the Plaintiff's business premises and seized computers and other items from the Plaintiff's private office.

25. The search of the Defendant's premises was conducted without a search warrant and without probable cause, in violation of the

Fourth Amendment to the United States Constitution and Article
Fourteen of the Massachusetts Declaration of Rights, all in violation of
42 U.S.C. 1983, et. seq.

26. The actions of the Defendants and those for whose conduct
they are responsible, in conducting a warrantless search and seizure of
the Plaintiff's business offices, were done with threats, intimidation and
coercion and are, therefore, actionable under M.G.L.c. 12, section 11H-1.

WHEREFORE, the Plaintiff demands Judgment enter in his favor
plus attorneys fees and costs.

PLAINTIFF DEMANDS A TRIAL BY JURY.

JAMES P. CIESLUK

By His Attorney,



FRANCES L. ROBINSON

BBO#: 422910

Davis, Robinson & White, LLP

One Faneuil Hall Marketplace, 3rd Fl.

Boston, Massachusetts 02109

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James P. Ciesluk

(b) County of Residence of First Listed Plaintiff NORFOLK
(EXCEPT IN U.S. PLAINTIFF CASES)**DEFENDANTS :** Town of Bellingham, Brian D. Kitcher, Peter Lemon, Edward Guzowski, John Melanson, Gerard L. Daigle & Richard PerryCounty of Residence of First Listed NORFOLK
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

FRANCES L. ROBINSON
Davis, Robinson & White, LLP
One Faneuil Hall Marketplace, 3rd Fl.
Boston, MA 02109- (617) 723-7339

04-12009 RWZ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 190 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-- Med. Malpractice <input type="checkbox"/> 365 Personal Injury-- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Force Ejectment <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (13951b) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 U.S.C. 1983

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**
NONE

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) JAMES P. CIESLUK v. TOWN OF BELLINGHAM, BRIAN D. KITCHER, PETER LEMON, EDWARD GUZOWSKI, JOHN MELANSON, GERARD L. DAIGLE and RICHARD PERRY

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Frances L. Robinson - Davis, Robinson & White, LLP

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